

HIGH COURT OF UTTARAKHAND AT NAINITAL

First Bail Application No. 273 of 2024

XApplicant

Versus

State of UttarakhandRespondent

Present:-

Mr. Dinesh Chandra Joshi, Advocate for the applicant.

Ms. Manisha Rana Singh, A.G.A. for the State.

Hon'ble Ravindra Maithani, J. (Oral)

Applicant is in judicial custody in Case Crime No.0317 of 2022, under Sections 376(3), 506 IPC and Section 5(j)(ii)/6 of the Protection of Children from Sexual Offences Act, 2012, Police Station- Haldwani, District- Nainital. He has sought his release on bail.

2. Heard learned counsel for the parties and perused the record.

3. According to the FIR, the informant along with her family was staying in a rented accommodation. The applicant was also their neighbourer. The applicant used to molest the niece of the informant. The family members of the applicant were told about it, but nothing changed. When it was detected that the victim was pregnant for six months, she revealed that it is the applicant, who established physical relations with the victim 4/5 times,

and threatened her to life in case she reveals it to anyone. The victim was 15 years of age.

4. The applicant was a Child in Conflict with Law ("CIL"). He moved an application for bail before the Juvenile Justice Board, Haldwani, Nainital ("JJ Board"), which was rejected on 22.07.2022. It so happened that on 07.10.2022, the JJ Board conducted preliminary assessment under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 ("the Act") and passed an order that the CIL should be tried as an adult under Section 18(3) of the Act. Thereafter, another bail application was filed by the CIL, where the trial was transferred in the court of Special Judge (POCSO)/Special Judge/ Additional District and Sessions Judge, Haldwani, Nainital. By the order dated 28.10.2022, the bail application of the CIL had been rejected. Now the instant bail application has been filed.

5. Learned counsel for the CIL would submit that the CIL has not committed any offence; in the observation home, the CIL has made great paintings; the CIL's conduct with the neighbourers is quite well; the CIL is a studious child and he did not flee from justice; the CIL has no criminal history; the CIL had also appeared in the

examination after seeking permission from the court; the DNA examination is doubtful.

6. Learned State Counsel would submit that this bail application has to be decided under Section 12 of the Act. She would submit that as per the Social Investigation Report, the conduct of the child has been found satisfactory.

7. A CIL shall be released on bail irrespective of the offence being classified asailable or nonailable, subject to the riders, as given in the proviso to sub Section 1 to Section 12 of the Act.

8. The CIL, in the instant case, was initially produced before the JJ Board. His bail application was rejected by the JJ Board. Thereafter, the JJ Board conducted preliminary assessment under Section 15 of the Act and passed an order that there is a need for trial of the CIL as an adult. It is, thereafter, the trial was transferred to the POCSO court, which further rejected the bail application. The order rejecting the bail by the JJ Board has not been appealed against. Even the order passed by the POCSO court has not been challenged, as such. A fresh bail application has been filed before this

Court. But, in view of Section 8(2) of the Act, this Court can entertain this matter as a bail application produced before the JJ Board. Section 8(2) of the Act reads as follows:-

“8. Powers, functions and responsibilities of the Board.—(1)

(2) The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Children’s Court, when the proceedings come before them under section 19 or in appeal, revision or otherwise.

(3)

9. Even after the CIL is transferred for trial as an adult, various precautions have been given under the Act so as to protect the rights of the child. In fact, Section 19(2) of the Act provides that after final order, an individual care plan shall be prepared for such CIL. Section 19(3) of the Act also makes specific provisions in such cases. These sub Sections 19(2) and 19(3) of the Act are as follows:-

“19. Powers of Children’s Court.—(1)

(2) The Children’s Court shall ensure that the final order, with regard to a child in conflict with law, shall include an individual care plan for the rehabilitation of child, including follow up by the probation officer or the District Child Protection Unit or a social worker.

(3) The Children’s Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety

till he attains the age of twenty-one years and thereafter, the person shall be transferred to a jail: Provided that the reformatory services including educational services, skill development, alternative therapy such as counselling, behaviour modification therapy, and psychiatric support shall be provided to the child during the period of his stay in the place of safety.

(4)

(5)"

10. Even if a CIL is transferred for trial as an adult under Section 18(3) of the Act, his bail application shall be entertained under Section 12 of the Act. This view has been consistently discussed and followed in various judgments of various High Courts. In the case of Ccl A Vs State Nct of Delhi, (2020) 10 DEL CK 0155, the Hon'ble Delhi High Court has categorically held that, **“even when a child is sent-up for trial as an adult before a Children's Court, the child does not become an adult or 'major', but is only to be treated differently considering the heinous nature of the offence alleged and consequent need for a stricter treatment of the offender, though still as a juvenile in conflict with law.”** The Hon'ble Delhi High Court further observed that, **“even though a child may be sent-up for trial before the Children's Court as an adult, there is no provision in the JJ Act that requires any departure from considering the matter of release**

of such child on bail under section 12.” Similar views have been expressed in the cases of Siddalinga SN Vs. State of Karnataka MANU/KA/0774/2023, and Shubham Alias Bablu Milind Vs. State of Maharashtra, MANU/MHOR/142201/2022.

11. The bail to a CIL may be denied if there appear reasonable grounds for believing that his release is likely to bring him into association with any known criminal or expose him to any moral, physical or psychological danger, or his release would defeat the ends of justice.

12. The governing principle of the Act is given under Section 3 of the Act that principle of best interest is one of the principles, which provides that all decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential. In fact, as per principle (v), the primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be.

13. In the instant case, both the CIL and the victim were neighbourers. The victim has already been examined

at trial. After 6 months of pregnancy, the incident could be revealed. The FIR records that 4/5 times, the relationship were established. Both were young. The CIL was 17 years of age, whereas, the victim has stated her age as 15 years. Various questions would find deliberation during trial, which includes whether the relationship were consensual? Whether the parties were in relationship? If for the first time the offence was done, why the victim did not raise any alarm? Where the incident took place? Etc.

14. The Social Investigation Report does not reveal anything adverse against the CIL. The CIL was a student at the relevant time studying in class XII. His conduct was good with everyone.

15. Having considered, this Court is of the view that it is a case fit for bail and the CIL deserves to be enlarged on bail.

16. The bail application is allowed.

17. Let the CIL be given in the custody of his father, subject to production of two reliable sureties. The father of the CIL shall also give an undertaking that he shall take care of the CIL and shall not allow him to contact any of the

witnesses or their family members. The father of the CIL shall also undertake that he shall also not contact either the witnesses or any of any of their family members.

(Ravindra Maithani, J)
11.06.2024

Ravi Bisht